

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 303 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KHUSHALBAVA JESINGBAVA

Appearance:

MS GAJJAR, AGP, for Petitioner

MS GANDHI FOR MR SS BELSARE for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/11/2000

ORAL JUDGEMENT

1. This is an appeal preferred under Section 100 of the Code of Civil Procedure against a judgment and decree passed by learned Joint District Judge, Baroda, in Civil Appeal No.133 of 1982 on January 20, 1983, which arose out of a judgment and decree rendered in Regular Civil Suit No.1407 of 1977 from the Court of learned Civil

Judge (S.D.), at Baroda.

2. The facts of the case, in a narrow compass, are that, present respondent No.1 had preferred Regular Civil suit No.1407 of 1977 in the Court of learned Civil Judge (S.D.), at Baroda, against the present appellant and one Govindbhai Ravjibhai, who is respondent No.2 herein. The suit was for a declaration that the order of the Deputy Secretary (Revenue), passed on June 30, 1975 in Revision Application setting aside the order of the Collector, Baroda, passed in an appeal on July 31, 1971 is null, void, inoperative and not binding to the plaintiff. The second and consequential relief was in the nature of an injunction on the Government-defendant No.1 and to permanently injunctioning them from interfering with the plaintiff's possession in respect of the suit land, i.e. survey No.202 admeasuring 2 acres and 25 Gunthas of village Bhaka of Naswadi taluka of Baroda district. The said piece of land was purchased by the plaintiff from Govindbhai Ravjibhai-original defendant No.2 and present respondent No.2 under a registered sale deed dated January 30, 1968 for a consideration of Rs.1800/-. The land admeasured 2 acres and 25 Gunthas and was assessed at Rs.1.65 ps. The said transaction was duly recorded and entered into the records of the Government after due verification. However, subsequently, Assistant Collector, Dabhoi initiated proceedings under Section 73-A of the Bombay Land Revenue Code ("Land Revenue Code" for short) on assumption that the said transaction was hit by the provisions of the said section and ordered that action be taken under Section 79-A of the Land Revenue Code. The plaintiff carried the said order in appeal before the Collector, Baroda. The said appeal was allowed and the order of the Assistant Collector, Dabhoi, was set aside by the Collector. Subsequently, the matter was taken in revision by the Deputy Secretary (Revenue) under an order dated June 30, 1975 and reversed the finding of the Collector, Baroda. The matter was remanded for action under Section 79-A of the Bombay Land Revenue Code. This order aggrieved the plaintiff and, therefore, preferred the said suit in the Civil Court contending that the order is illegal as it ignores the basis principles of Section 73-A of the Land Revenue Code.

2.1 The suit was opposed to by the Government by filing a written statement at Ex.20. In substance, the Government has denied all the contentions raised in the plaint by the plaintiff. It was contended that Section 73-A of the land Revenue Code was applicable to village Bhaka and, therefore, the Deputy Secretary had remanded

the matter back to the Collector. It was contended that notice under Section 80 of Code of Civil Procedure was not valid or true. It was admitted that the land property was purchased by the plaintiff from defendant No.2 by registered sale deed. It was contended that the entry was rejected by the revenue authority as the sale was entered into without permission of defendant No.1.

3. The Trial Court framed issues at Ex.29 and, ultimately, gave a finding that provisions of Section 73-A of the Land Revenue Code would not be attracted in respect of suit property and suit transaction, as the requirements of Section 73-A were not fulfilled. For coming to this conclusion, the learned Trial Judge observed that the land in question was assessed at Rs.2-8-0 ps. as was indicated in Ex.32. That document relates to the year 1931-32. The Trial Court observed that the notification under Section 73-A (Ex.40) was issued much later. The learned Trial Judge observed further that the notification dated 4.4.1961 (Ex.40) under Section 73-A of the Code was applicable to all those villages in the scheduled areas in the state of Gujarat in which survey settlement under the said Code was not introduced. Section 73-A exempts from operation of the said provision all the persons, not being member of a Scheduled Tribe, holding land in the village to which said Section 73-A is declared to be applicable by the said notification. Considering the relevant documents, the Trial Court, ultimately, passed a judgment and order setting aside the order of the Deputy Secretary (Revenue), passed on June 30, 1975 in Revision Application No.SS/RD/LND/B77/75 and declaring it to be null and void, illegal, inoperative and not binding to the plaintiff, and ultra vires the authority of the State Government. A permanent injunction was issued against defendant No.1-Government restraining it from taking any action so as to dispossess the plaintiff of the land in question with a view to resuming and regranting it to the original transferor.

4. Aggrieved by the said judgment and decree, the Government preferred appeal before the District Court, at Baroda. The learned Joint District Judge, after considering the contentions raised by both the sides, ultimately, dismissed the appeal with costs. The First Appellate Court observed that no error was committed by the Trial Court either of law or of fact. There was no error in appreciation of evidence led by the plaintiff and, therefore, the appeal was dismissed.

5. Aggrieved by the said judgment and decree in

appeal, the Government has preferred this Second Appeal under the provisions of Section 100 of the Code of Civil Procedure, wherein the following questions were formulated by this Court while admitting the appeal :-

"1. Even assuming that the survey settlement was made before merger of village Garbodiad with the State of Bombay, whether the Courts below have erred in holding that the said survey settlement is deemed to have been made under the Bombay Land Revenue Code.

2. Whether the Courts below erred in law in holding that the provision of Section 73(a) of the Land Revenue Code are not applicable in the suit land."

6. Learned Assistant Government Pleader, Ms. Gajjar, has taken this Court through the entire record and proceedings. She submitted that both the Courts below have committed an error in not appreciating the fact that the assessment relied upon and accepted was not under Bombay Land Revenue Code. The appeal, therefore, deserves to be allowed by setting aside the judgments and decrees of the Courts below.

7. Ms. S.G. Gandhi, learned advocate appearing for learned advocate, Mr. Balsara, for the respondents has opposed this appeal. According to her, the findings of the Courts below are based on facts of the case. These findings of facts need not be disturbed in this Second Appeal. There is proper appreciation of evidence by the Courts below. She subsumed that, in similarly situated cases, this Court has, on earlier occasions, dismissed the appeals of the Government. She has given numbers of certain such appeals, which are Second Appeals No.302 of 1983, 336 of 1983 and 24 of 1985. She has placed on record a copy of the judgment rendered by this Court (Coram: J.R. Vora, J.) in Second Appeal No.24 of 1985 on August 18, 2000. She, therefore, subsumed that the appeal may be dismissed.

8. Considering the contentions raised by the rival sides in light of the evidence, it may be noted, at the outset, that both the Courts below have given concurrent findings of fact based on evidence led by the parties. This Court in this Second Appeal is not required to enter into such questions of fact. Still however, for satisfying the conscience of this Court, this Court has gone through the documents on record.

9. The question that requires to be examined by this Court is whether Section 73-A of Bombay Land Revenue Code would be or would not be applicable to the land in question situate in the village Bhaka of Naswadi taluka of Baroda district. For doing that, provisions of Section 73-A may be considered at the outset. Section 73-A runs as under :-

"73A. Power to restrict right of transfer:- (1)

Notwithstanding anything in the foregoing section, in any tract or village to which the State Government may, by notification published before the introduction therein of an original survey settlement under Section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) The State Government may, by notification in the Official Gazette, from time to time exempt and part of such tract or village or any person or class of persons from the operation of this section."

It is amply clear from the plain reading of the said section that the Government may issue notification imposing restriction on the right of transfer of land situate in any tract or village. That the notification imposing restriction on the right of transfer of the land must have been published before introduction of original survey settlement in that area to which it is sought to be applied and on issuance of such notification, an occupant cannot transfer the property without prior permission of the Collector. With this background, if the evidence on record is seen, it is amply clear from Ex.32 that the land was assessed from 1931-32. Besides this, original survey settlement was done in village Bhaka before the merger of the Princely State of Garboriad with the State of Bombay, which was done during British Regime. For the purpose, Fatesinh Sursinh Thakore, in whose Jagir village Bhaka fell, was examined at Ex.31 and he stated that survey settlement of agricultural land in his Jagir was made during the time of Political Agent. In support of his say, he has also produced certain original documents. Both the Courts below have accepted these documents as true and genuine. The Courts have expressed their satisfaction about the genuineness, correctness, trustworthiness of this witness. The Courts below have considered the evidence of witnesses examined on behalf of the Government, who

have pleaded ignorance about the introduction of village survey settlement in the village Bhaka. They do not say anything about any survey settlement having been made and introduced in the area at the relevant point of time.

10. A decision rendered by this Court in the case of Bhanabhai v. Babubhai, XV GLT 144 was relied upon by the Courts below. In that judgment, it has been observed thus:

"If we turn to the Bombay Government's resolution dated 6.2.1952 and also to the proviso to clause 5 of the Indian States (Application of Laws) Order 1948 it appears clear that the repeal by this order of any enactment shall not affect the validity, liability, etc. already acquired, accrued or incurred under State Laws. It is also further clear that by virtue of this proviso the survey settlements already affected in the merged states under the corresponding laws will be saved. It is too late in the day now for the State of Gujarat to say in the year 1961 that these survey settlement cannot be deemed to have been made under the Land Revenue Code."

11. It is amply clear from the evidence on record and observations made by both the Courts below that provisions of Section 73-A could not have been made applicable to the lands in the village Bhaka as assessment was already done prior to the notification issued under Section 73-A of the Land Revenue Code. Both the questions formulated by this Court while admitting this appeal are, therefore, answered in negative. There appears to be no reason, therefore, for the appellant to be aggrieved. There appears not any merits in the appeal. The appeal deserves dismissal and the same is dismissed confirming the judgment and decree passed by the Courts below. No orders as to costs.

[A.L. DAVE, J.]

gt